

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAFAEL ARDEN JONES, SR.,

Plaintiff,

-against-

UNITED STATES SENATE GOP, ET AL.,

Defendants.

21-CV-10278 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff filed this action *pro se*, when he was detained at the Vernon C. Bain Center (VCBC). On December 3, 2021, the Court denied Plaintiff's request to proceed *in forma pauperis* (IFP) under 28 U.S.C. § 1915(g) and dismissed the complaint without prejudice.¹ On January 24, 2022, the Court received Plaintiff's notice of appeal and a motion for an extension of time to file the notice of appeal. (ECF 4-5.) For the following reasons, Plaintiff's request for an extension of time to file a notice of appeal is granted.

DISCUSSION

Under Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure, a notice of appeal in a civil case must be filed within thirty days after entry of judgment. The district court may extend the time to file a notice of appeal, however, if a plaintiff moves for an extension within thirty days of the expiration of the time to file notice of appeal, and shows excusable neglect or good cause for untimely filing. *See* Fed. R. App. P. 4(a)(5)(A).

Here, the Court entered judgment on December 3, 2021. Plaintiff signed his motion for extension of time to appeal and appeal on January 19, 2022, and under the prison mailbox rule,

¹ The Court noted in the order of dismissal that Plaintiff is also barred, under 28 U.S.C. § 1651, from filing any new action IFP, whether or not he is a prisoner, without first obtaining from the court leave to file. *See Jones v. Stewart*, ECF 1:16-CV-2375, 9 (S.D.N.Y. Aug. 25, 2016).

the Court deems these submissions filed on that date. *See Hardy v. Conway*, 162 F. App'x 61, 62 (2d Cir. 2006) (“[I]n the absence of contrary evidence, district courts in this circuit have tended to assume that prisoners’ papers were given to prison officials on the date of their signing.”). Plaintiff states that his appeal is late because he did not receive the Court’s order of dismissal until January 16, 2022. Accordingly, for good cause shown, the Court grants Plaintiff’s motion for an extension of time to appeal.

The Court notes that it appears that Plaintiff is no longer detained at VCBC, where he was held when he filed this action. Instead, the address on the envelope of Plaintiff’s notice of appeal indicates that he is currently at the Robert N. Davoren Complex (RNDC), and public records of the New York City Department of Correction confirm that he is at RNDC. The Court therefore directs the Clerk of Court to change Plaintiff’s address of record and mail him a copy of this order at RNDC. The Court cautions Plaintiff that, in any case that he has pending, it is his responsibility to file a change of address form notifying the Court that his address has changed.

CONCLUSION

The Court grants Plaintiff’s motion for an extension of time to appeal. (ECF No. 4.) The Court directs the Clerk of Court to change Plaintiff’s address of record to Robert N. Davoren Complex, 11-11 Hazen Street, East Elmhurst, NY 11370, and mail him a copy of this order at RNDC.

SO ORDERED.

Dated: January 28, 2022
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge